CHAI CHOONG KHOON

v.

RAEMAH PANDAK ISMAIL & ORS.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[CIVIL SUIT NO. 1094 OF 1984]
27 JULY 1992

CONTRACT: *Whether contract exists based on the statutory declaration of the deceased only without the execution of the relevant transfer form.*

EVIDENCE: *Title deed lost - Not produced in court - Attesting witness of the statutory declaration of deceased not called as witness - Statutory declaration of deceased stated only the loss of title deed and not the sale of land to plaintiff - Admissibility of evidence.*

LIMITATION: *Whether the action by the plaintiff is time barred under the Limitation Act 1953.*

The plaintiff alleged that the deceased, Dollah bin Rashid alias Abdullah bin Rashid, had sometime in 1968, sold his land to the plaintiff for the sum of RM3,000, and that the transaction could not be registered in his name as the issue document of title to the said land was lost or mislaid. Therefore the deceased by a statutory declaration dated 1 July 1968 had applied for a duplicate title deed in order to enable him to effect the transfer. The deceased's brother-in-law was aware of the said transaction and had testified for the plaintiff.

The deceased subsequently died in 1972. By a distribution order made on 16 September 1986, the said land was given to the 2nd defendant with the consent of the other defendants. By a transfer, dated 2 October 1986, the said land was transferred to the intervener. However the said transfer was not registered as the title deed was kept by the brother-in-law. The plaintiff had lodged a private caveat on the said land in 1982 and applied for a declaration that he was the owner of the said land, for specific performance of the sale and purchase of the said land, to register the said land into his name and for costs and other relief.

Held:

[1] Plaintiff was time-barred in his action which was not brought within the time period stated in s. 6 (relevant for contract matters) nor did he bring the said action during the time period stated in s. 9 (relevant for recovery of land) of Limitation Act 1953.

[2] As the transfer form was not produced in Court and the deceased statutory declaration only stated the losts of the title deed and as it was not attested before the land officer, the plaintiff's relevant documents were inadmissible pursuant to Evidence Act 1950.

[3] There was no material and relevant evidence to state that the plaintiff was the owner of the said land and that the contract was enforceable. There was absolutely nothing to prevent the second defendant, on being given the land after the distribution order on 16 September 1986 to sell the said land to the intervener who was a *bona fide* purchaser for value without notice of the said land despite the caveat lodged by the plaintiff in 1982, which had no effect as it was beyond the period of limitation.

[Plaintiff's claim against the defendants and intervener dismissed with costs.]

Cases referred to:
Arunasalam v. Letchumi [1956] 22 MLJ 89
Harjit Singh v. Regina [1963] 29 MLJ 287

Legislation referred to:
Limitation Act 1953 ss. 6, 9

For the plaintiff - A.S. Iaduray; M/s. Iaduray & Co.
For the defendant & intervener - S.A. Lingam; M/s. Lingam & Co.

JUDGMENT

Abdul Malek Ahmad J:

Dollah bin Rashid alias Abdullah bin Rashid, hereinafter "the deceased", was alleged by the plaintiff to have sold his land to the plaintiff held under Geran No. 7176 Lot 12520, Mukim of Ulu Kinta comprising an area of 1 acre 30 poles sometime in 1968 for the sum of RM3,000. The deceased had passed away on 25 July 1972.

The plaintiff had further alleged that he had paid the purchase price at the time of the transaction and that at the material time, the issue document of title to the said land was lost or mislaid and as such the registration of the plaintiff's name could not be effected. Accordingly, by a statutory declaration dated 1 July 1968, the deceased had applied to the Registrar of Titles, Perak for the issue of a duplicate title deed in place of the lost title deed to enable him to effect the transfer of the said land to the plaintiff. One of the deceased's brothers-in-law, namely Yang bin Itam, was aware of the said transaction and had testified for the plaintiff.

Subsequently, the plaintiff came to know of the issue of a fresh title deed to the said land in the form of Geran No. 4448 but despite repeated requests to the defendants, who are respectively the lawful widow, son and daughters of the deceased, to arrange for effectuation of the transfer, they had failed to do so. The plaintiff had therefore lodged a private caveat on the said land and was now suing the defendants for a declaration that the plaintiff is the owner of the said land, for specific performance of the sale and purchase of the said land, for the transfer of the said land in his name to be registered in the official records, and for costs and other relief.

By a notice of motion filed on 14 March 1988, the plaintiff had applied for judgment against the 1st, 2nd and 3rd defendants on the grounds of their non-appearance. This was granted on 8 April 1988 but was stayed pending the hearing of the application of the said three defendants, filed by way of summons in chambers on 1 April 1988, for an order that they be granted an extension of time of fourteen days to file their appearance and defence. This application was subsequently granted on 13 May 1988.

In their statement of defence, the 1st, 2nd and 3rd defendants had pleaded that by a distribution order dated 16 September 1986, the said land had been given to the 2nd defendant with the consent of the other defendants. By a transfer dated 2 October 1986, the said land had been transferred to the intervener, who had applied to intervene on 4 August 1989 and whose application was granted on 27 October 1989, for the sum of RM8,000. However, the said transfer had not been registered as the title deed is still in the possession of Yang bin Itam.

By the time the trial got off the ground on 8 August 1991, after several postponements with a view to settlement, the Court was informed that the 1st defendant had passed away on 18 April 1991 and that the 4th defendant had never been served.

The plaintiff's only supporting document is the statutory declaration made by the deceased on 1 July 1968 declaring that the relevant title deed had been lost in 1945 and that with the issue of the new title deed, the plaintiff's name could be entered as a transferee. This exhibit was originally marked as an exhibit but due to objections by learned Counsel for the defendants and the intervener and with the consent of learned Counsel for the plaintiff, because the land officer had not yet been called at that juncture, it was only marked for identification. The defendants are now strongly disputing the document because their contention is that the statutory declaration is not admissible as the attesting witness has not been called, that the deceased was illiterate and therefore could not have signed the way he did on the document, that the statutory declaration cannot be attested before a land officer, that there was no official stamp of the relevant designation of the land officer below his signature, that the land officer called by the plaintiff after the first hearing date could not verify the relevant documents without seeing the originals, that the statutory declaration never stated that the RM3,000 was paid by the plaintiff and that the relevant transfer form had never been produced although the plaintiff's witnesses had stated that it had been executed together with the statutory declaration.

In addition, it is clear that the plaintiff had been sleeping on his rights as despite the problems of the missing title deed at the time of the alleged transaction around July 1968, he did nothing until he filed the caveat on 9 October 1982, which was fourteen years after the event, and the action on 27 July 1984, which was sixteen years after the accrual of the cause of action, when he should have done so by 1 July 1974 pursuant to s. 6 of the Limitation Act 1953, relevant for actions founded on contract, or at the latest by 1 July 1980 under s. 9 of the same Act which is the applicable provision for actions to recover land.

As for Yang bin Itam, the defendants maintain that as far as they were concerned, he was only present to assist the deceased in getting the new title deed and not to sell the said land to the plaintiff and this contention becomes more acceptable in the circumstances upon a balance of probabilities because the transfer form was never produced and the deceased's statutory declaration only states about the loss of the title deed which needs to be replaced but does not state the fact of the sale to the plaintiff.

On these considerations, there is absolutely nothing to prevent the second defendant, on being given the land after the distribution order on 16 September 1986, to sell the said land to the intervener who is a *bona fide* purchaser for value without notice of the said land despite the caveat lodged by the plaintiff in 1982, which has no effect in the circumstances as it is well past the period of limitation.

With my finding that upon a balance of probabilities there cannot have been a sale of the said land by the deceased to the plaintiff in 1968, with the plaintiff's relevant document in a state of not being admissible at all following the provisions of the Evidence Act 1950 and with the action itself being brought out of time, I have no other alternative but to dismiss the plaintiff's claim with costs as both against the defendants and the intervener.

Before I end, it is pertinent to point out that learned Counsel for the plaintiff in his written submissions had applied to introduce a certified true copy of the relevant statutory declaration but to my mind, this would serve no purpose as apart from the trial being over, it is only a certified true copy of a certified true copy and not of the original.

Also found at [1992] 4 CLJ 1977